

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
LIBRARY OF CONGRESS  
Washington, D.C.

**In the Matter of:**

**Determination of Royalty Rates and  
Terms for Making and Distributing  
Phonorecords (*Phonorecords III*)**

**16-CRB-0003-PR (2018-2022)**

**SERVICES' UNOPPOSED MOTION FOR ACCESS TO AND USE OF THE  
RESTRICTED WEBCASTING V INITIAL DETERMINATION**

Pursuant to 17 U.S.C. § 801(c), Amazon.com Services LLC, Google LLC, Pandora Media, LLC, and Spotify USA Inc. (collectively, the “Services”) respectfully request that the Copyright Royalty Judges (“Judges”) enter an order stating that all eligible participants in this proceeding may have full access to and use of the restricted version of the Judges’ Initial Determination in Webcasting V on an outside counsel only basis, as provided in Section IV.B of the Phonorecords III Protective Order.<sup>1</sup> To that end, the Webcasting V determination would be treated as restricted material under the Phonorecords III Protective Order.

The Judges have previously granted motions like this one to permit participants in a later proceeding to access and use restricted material — including determinations — from a prior

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<sup>1</sup> Counsel for the Services have conferred with counsel for the other eligible participants in this proceeding — the National Music Publishers’ Association and Nashville Songwriters Association International (together, “Copyright Owners”) — as well as counsel for participants in Webcasting V. We are authorized to state that the Copyright Owners do not oppose this motion. Participants in Webcasting V that have responded either do not oppose this motion (Educational Media Foundation, Google Inc., National Religious Broadcasters Noncommercial Music License Committee, Pandora Media, LLC, and Sirius XM Radio Inc.) or take no position (National Association of Broadcasters). Counsel for SoundExchange Inc., which also represents the remaining record label participants in Webcasting V, has not yet informed the Services of their position on this motion; we will notify the Judges promptly after we learn their position.

proceeding.<sup>2</sup> Most recently, in Webcasting V, the Judges granted SoundExchange and NRBNMLC access to restricted Phonorecords III expert testimony and the restricted Phonorecords III determination for use in their respective written direct cases.<sup>3</sup>

The Services ask the Judges for similar relief here. Specifically, the Services request that all eligible Phonorecords III remand participants be permitted to access and reference the restricted Webcasting V initial determination. As was the case when the Judges allowed access to the restricted Phonorecords III determination in Webcasting V, this remand proceeding will be “enhanced, to the benefit of the Judges, if the parties have access” to the restricted Webcasting V determination so that they “can make informed decisions as to the presentation of their . . . cases.”<sup>4</sup>

Denying the eligible Phonorecords III remand participants such access could prejudice the participants in this proceeding and result in needless inefficiencies. Under the schedule in this proceeding, the participants’ written reply briefs on the remanded issues are due on July 2, 2021. The participants should have the opportunity to address in their reply submissions any aspects of the Webcasting V initial determination that may be relevant to the remanded issues in this proceeding, including any discussion by the Judges of the interactive services that are participants in this proceeding. However, only the restricted version of the Webcasting V Initial

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<sup>2</sup> See, e.g., Order Granting in Part Motion For Access to the Restricted Phonorecords III Determination and Certain Restricted Phonorecords III Testimony at 1, Web V, Docket No. 19-CRB-0005-WR (2021-2025) (Sept. 13, 2019) (granting access to restricted Phonorecords III determination and expert testimony) (“Webcasting V Order”); Order on SoundExchange Motion for Access to Restricted Web-IV Evidence at 3, SDARS III, Docket No. 16-CRB-00001 SR/PSSR (2018-2022) (Jan. 25, 2017) (granting access to Webcasting IV restricted materials); Motion to Set Specific Discovery Deadlines and Compel the Copyright Owner Participants’ Adherence to their Discovery Obligations at 4, SDARS III, Docket No. 16-CRB-00001 SR/PSSR (2018-2022) (Aug. 23, 2016) (same); Order Granting in Part and Denying in Part Services’ Omnibus Motion to Compel SoundExchange to Produce Documents at 5, Web IV, Docket No. 14-CRB-0001-WR (2016-2020) (Jan. 15, 2015) (granting access to prior unredacted testimony in Webcasting II and Webcasting III).

<sup>3</sup> Webcasting V Order at 1.

<sup>4</sup> *Id.* at 3.

Determination is currently available. It is unlikely that a public, redacted version of the determination will be available sufficiently in advance of the July 2, 2021 deadline for participants in this proceeding to review and address any of the Judges’ rulings in their reply submissions. While the Judges have directed the Webcasting V participants to submit proposed redactions to the Initial Determination by June 25, 2021, the Judges will “consider[] the participants’ submission” before “mak[ing] the final decision as to what material, if any,” is “properly redacted from the public version.”<sup>5</sup> In Phonorecords III, the Judges released the public version of the Initial Determination on March 19, 2018, which was approximately five weeks after the parties submitted their proposed redactions on February 6, 2018.

Moreover, even if a public, redacted determination were available, the public version may not allow the Services to understand and evaluate how, for example, the specific economic analyses presented may have influenced the Judges’ determination, or how — if at all — those analyses might impact the present proceeding. Because the Judges often “are informed” in one set of royalty-setting proceedings by their decisions in proceedings setting other royalties, the Phonorecords III remand participants should have full access to the restricted Webcasting V determination subject to the restrictions of Phonorecords III Protective Order, including on an outside counsel only basis.<sup>6</sup> Granting the Phonorecords III parties prompt access to the restricted Webcasting V Initial Determination will promote efficiency in the remand proceeding, by allowing the parties to address in their reply submissions — as opposed to in later supplemental

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<sup>5</sup> Order Soliciting Proposed Redactions, Web V, Docket No. 19-CRB-0005-WR (2021-2025), eCRB Doc. No. 25333 (June 11, 2021).

<sup>6</sup> *E.g.*, Order Granting in Part and Denying in Part Motions for Rehearing (Amended) at 18, Phonorecords III, Docket No. 16-CRB-0003-PR (2018-2022), eCRB Doc. No. 3602 (Jan. 4, 2019).

briefing — the relevance of any legal rulings in the Webcasting V Initial Determination to the remanded issues in this proceeding.

For these reasons, the Services respectfully request that the Judges promptly rule that all eligible parties in the Phonorecords III remand proceeding may have full access to and use of the entire restricted version of the Webcasting V Initial Determination, subject to the Protective Order in Phonorecords III. Specifically, the Judges should direct the overlapping parties in Phonorecords III and Webcasting V — Google and Pandora — to provide a copy of the restricted version of the Initial Determination in Webcasting V to the eligible parties in this proceeding.

DATED: June 18, 2021

Respectfully submitted,

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## Proof of Delivery

I hereby certify that on Friday, June 18, 2021, I provided a true and correct copy of the SERVICES' UNOPPOSED MOTION FOR ACCESS TO AND USE OF THE RESTRICTED WEBCASTING V INITIAL DETERMINATION to the following:

Johnson, George, represented by George D Johnson, served via ESERVICE at george@georgejohnson.com

National Music Publishers' Association (NMPA) et al, represented by Benjamin Semel, served via ESERVICE at Bsemel@pryorcashman.com

Nashville Songwriters Association International, represented by Benjamin K Semel, served via ESERVICE at Bsemel@pryorcashman.com

Signed: /s/ Scott Angstreich